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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.               | CONFIRMATION NO.            |
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| 10/721,552  | 11/25/2003  | Jean-Louis Gueret    | 147192                            | 5845                        |
| 92793   | 7590        | 01/27/2011           |                                   |                             |
| Oliff & Berridge, PLC<br>P.O. Box 320850<br>Alexandria, VA 22320-4850 |             |                      | EXAMINER<br>STETZ, RACHEL RUNNING |                             |
|   |             |                      | ART UNIT<br>3776                  | PAPER NUMBER                |
|   |             |                      | NOTIFICATION DATE<br>01/27/2011   | DELIVERY MODE<br>ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

OfficeAction92793@oliff.com  
jarnstrong@oliff.com

# Office Action Summary

**Application No.**

10/721,552

**Applicant(s)**

GUERET, JEAN-LOUIS

**Examiner**

RACHEL R. STEITZ

**Art Unit**

3776

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-32, 35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-32, 35, 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-26, 29-32, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (US 5,918,994) in view Anderson (US 3,343,551).

Gueret discloses rod having an end portion with a longitudinal axis, a brush (101) fixed to the end portion of the rod the brush including a twisted-wire core fixed to the end portion of the rod the core having a bristle-carrying portion and a remote end, and a plurality of bristles extending from the bristle-carrying portion of the twisted-wire core (see Figure 1). The bristles have free ends defining an envelope surface having a non-circular cross-section at least one portion along the bristle carrying portion, and a receptacle (920) adapted to receive the rod and the brush in an assembled condition the receptacle having an inner wall and a wiper member (921) the rod (922) and the brush (901) being spaced from the inner wall in the assembled condition the wiper member being disposed in the receptacle such that the wiper member wipes the brush as the brush is withdrawn from the receptacle (see Figure 9). Gueret further discloses various mascara brushes having non-circular cross sections; longitudinal ribs; plane surfaces; concave surfaces; constant cross sections; varying cross sections; and cross sections

that vary in size, and having an envelope surface having a non-circular cross-section at least one point along the bristle carrying portion.

Gueret discloses the claimed invention except for the bristle carrying portion forming an angle greater than 0 degrees and less than about 20 degrees (claim 1), 0-15 degrees (claim 5), 0-10 degrees (claim 6), 0.2-15 degrees (claim 7), 1-10 degrees (claim 8), 5-10 degrees (claim 9), or the remote end of the core being situated at a distance from the longitudinal axis of the end portion of the rod less than about 7.5 mm (claim 10) or less than 4.5 mm (claim 11). Anderson teaches a mascara brush having a bend such that it forms an angle from about 0-60 degrees (column 4, lines 1-2) since the brush has a bend it would also have a spacing from the longitudinal axis of the rod. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brush of Gueret by tilting the brush so it forms an angle with the longitudinal axis as taught by Anderson in order to provide spacing between the brush and handle portion to aid the user in applying a cosmetic. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the remote end of the core situated at a distance from the longitudinal axis of the end portion of the rod less than about 7.5 mm or less than 4.5 mm as disclosed by applicant, since it has been held that where the general conditions of a claim are disclosed in the prior art (Anderson), discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

3. Claims 27, 28, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (US 5,918,994) in view of Anderson (US 3,343,551), and Gueret (US 5,462,798).

Gueret discloses rod having an end portion with a longitudinal axis, a brush (101) fixed to the end portion of the rod the brush including a twisted-wire core fixed to the end portion of the rod the core having a bristle-carrying portion and a remote end, and a plurality of bristles extending from the bristle-carrying portion of the twisted-wire core (see Figure 1). The bristles have free ends defining an envelope surface having a non-circular cross-section at least one portion along the bristle carrying portion, and a receptacle (920) adapted to receive the rod and the brush in an assembled condition the receptacle having an inner wall and a wiper member (921) the rod (922) and the brush (901) being spaced from the inner wall in the assembled condition the wiper member being disposed in the receptacle such that the wiper member wipes the brush as the brush is withdrawn from the receptacle (see Figure 9). Gueret further discloses various mascara brushes having non-circular cross sections; longitudinal ribs; plane surfaces; concave surfaces; constant cross sections; varying cross sections; and cross sections that vary in size, and having an envelope surface having a non-circular cross-section at least one point along the bristle carrying portion. Gueret does not disclose the bristle carrying portion forming an angle greater than about 5 degrees and less than about 10 degrees relative to the longitudinal axis and the bristles comprising a compound configured to cause a modification to sliding resistance of the bristles in contact with the eyebrows or eyelashes.

Anderson teaches a mascara brush having a bend such that it forms an angle from about 0-60 degrees (column 4, lines 1-2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brush of Gueret by tilting the brush so it forms an angle with the longitudinal axis as taught by Anderson in order to provide spacing between the brush and handle portion to aid the user in application of the cosmetic.

Gueret '798 teaches compound configured to cause a modification to sliding resistance of the bristles (column 2, Example 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bristles of Gueret with a sliding component as taught by Gueret '798 in order to provide a sliding resistance to the bristles.

### ***Response to Arguments***

4. Applicant's arguments filed November 19, 2010 have been fully considered but they are not persuasive.
5. In response to applicant's argument that Anderson disparages prior art devices for the application of mascara that include brushes with spirally wound tufts since the prior art do not to separate the lash hairs, therefore, one having ordinary skill in the art would not be motivated to combine the teaching of Anderson with Gueret. The examiner agrees that Anderson teaches using a comb in order to better separate the lashes than prior art devices, however, Anderson was used merely as a teaching reference to show having an angle of an applicator relative to the handle the mere fact that Anderson uses

a comb applicator over a twisted bristle applicator is irrelevant since the rejection uses the teaching of Anderson using an angle of 0 to 60 degrees to provide a tilt in the mascara brush to aid the user in the applicator of mascara, not modifying the comb of Anderson to have bristles.

6. In response to applicant's argument that the angle of the bristle carrying portion relative to a longitudinal axis of an end portion of the rod is not a result-effective variable, however Anderson disclose a range of 0 to 60 degrees which encompasses all of the ranges as disclosed by applicant, therefore, the rejection of in re Aller has been removed from the office action since it is merely redundant of the rejection of Gueret in view of Anderson which discloses the claimed ranges.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL R. STEITZ whose telephone number is (571)272-1917. The examiner can normally be reached on Monday-Friday 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rachel Running Steitz/  
Primary Examiner  
Art Unit 3776

1/19/2011



Application/Control Number: 10/721,552  
Art Unit: 3776

Page 8